

2019 HOUSE AGRICULTURE

HB 1220

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee Peace Garden Room, State Capitol

HB 1220
1/31/2019
Job # 31919

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to priority of agricultural supplier liens; and to provide for application

Minutes:

Attachments #1-6

Representative Keiser, Sponsor: There are times a farmer purchases products and there are liens placed if there is a failure to perform relative to the agreed upon contract. This is a problem that has been for a long time. The parties have tried to work it out. Notice this is the .02000 version of the bill. It has been modified many times even before it was introduced.

How do you place a lien to protect yourself when your business is providing goods and services?

Section 1—The changes are technical in nature. The exception is the first six words of subsection 1. The current lien structure stays in place with that exception.

Subsection 2—This bill is creating an agricultural supplies lien where it exceeds \$50,000 in value has priority if the conditions are met.

There is a 20-day window to notify any other lien holder that they are placing a lien on those products.

The legislature has to act like a referee to determine what is the appropriate policy. What is going to create the appropriate business environment for those providing goods and services of all types. This is a solution that would work and is fair.

(6:51)

Rick Clayburgh, President and CEO of North Dakota Bankers Association:
(Attachment #1)

Amendment given page 4 of Attachment #1.

(15:18)

Representative Headland: Doesn't a bank currently have the ability when they offer a line of credit to a farmer to designate the funds for a specific purpose?

Rick Clayburgh: The input costs are sitting in an account. When that account is drawn down, how does the bank know that is what it is used for.

Representative Headland: If the farmer uses his line of credit, many suppliers aren't in a position to wait until harvest. How is a notice going to help you when that occurs?

Rick Clayburgh: Many times an institution will loan a producer their line of credit. The producer may be taking that operating line and going back and paying their supplier for a lien from the year before. If lenders are aware of that, they will work with the producer to help them pay that off. Many times that occurs without the lender being aware of it.

Representative Headland: I don't see how this notice is going to help the bank. The bank has something to secure that loan. Why do we need this bill?

Rick Clayburgh: The concern is if the bank is aware of it. We are trying to address those large situations. Our lenders also lend to the suppliers. We wanted to limit it. Most suppliers want to be paid within 30 days. We are trying to prevent the situation where somebody gets into trouble.

Chairman Dennis Johnson: Is this problem growing?

Rick Clayburgh: We have been in a downturn of commodity prices. Positive yields have smoothed that out. Most of the time the system works.

(23:15)

Barry Haugen, President of Independent Community Banks of North Dakota:
(Attachment #2)

Most of the time the banker knows because the customer discloses other borrowing.

Central notice system searches are free and easy.

We just want notification so we can ask the right questions to the producers at the right time.

The addendum shows an outline of other states in the area.

(33:30)

Vice Chair Trottier: This goes back a long way. Years ago bankers would have their customers sign a form stating that they will not take on a supplier's lien without notifying the bank. Is any of that going on now?

Barry Haugen: Every arrangement is different. Yes. You can put on loan provisions. With notification, we can ask the right questions.

Representative Headland: Could the requirement of notification be placed on the farmer as part of the loan documents rather than the supplier?

Barry Haugen: Every customer is different. Someone else might not demand that and then they will get the business.

Representative Headland: That is part of the bank's responsibility to assess the risk. If some other bank is willing to do it, that is part of doing business. I don't think this bill helps the banks.

Barry Haugen: Nothing in this bill changes the priority. If I had the strength of an agriculture supplier lien, I would lend all day long. They can wait four months and then jump first in line. It is not equitable--without any kind of notification.

Representative Skroch: It doesn't take long to run up \$50,000. How did you come up with that amount?

Barry Haugen: We didn't want to require it for small invoices. We are not set on that number. The original intent was the crisis in the 80s that left small suppliers unpaid. We also see several 100,000 dollars extended in the spring of the year and we would like to know.

Chairman Dennis Johnson: Is this a problem now or in the future?

Barry Haugen: We are in the third year of a difficult cycle. It is somewhat anticipatory. There is an inequity issue here regardless of the economic times.

Representative Satrom: Is this going to work? Can a person game the system by coming in at \$45,000? Then three weeks later another \$45,000.

Barry Haugen: The statute is unclear. It goes back to delivery of supplies. If there are multiple deliveries of \$45,000, those would have to be separate liens if they chose to file after 120 days.

Ryan Norrell, North Dakota Farm Credit Council: (Attachment #3)

(47:55)

Representative Satrom: I am assuming that if they don't file the liens within a certain number of days they are out of luck?

Ryan Norrell: The seed store would have 120 days to file the agriculture supplier's lien. If they file within those parameters, then they receive a super priority. After 120 days they become another lender out there with a lien.

Representative Tveit: The third to last paragraph, you indicate that creditors are surprised by the filing. I am surprised that in today's economy, the lenders work with the producers. Why would they be surprised somebody else is out there furnishing supplies?

Ryan Norrell: We talk with the farmer and everything is well. We find out later that a supplier's lien was filed. It breaks down that relationship.

Representative Tveit: As an ag. dealer, it is all about relationships. I would think up front you would know what is going on.

Lynn Paulson, Senior Vice President of Agribusiness Development, Bell Bank in Fargo:

North Dakota has a favorable super priority lien provision for input suppliers. This bill does not take away from that super priority position. It requires a supplier of over \$50,000 of products that is filing a supplier super priority lien, give notice to the lender of record within a reasonable period of time. It is simply a courtesy notice that lets the properly filed operating lender know that there will be a filing that will supersede their filing. Without notice it is often late in the year before all parties realize the supplier liens have been filed. The operating dollars are gone and there is a short fall for paying back the operating loan. Then legal action has to be taken such as foreclosure that often ends the farm and ranch operation.

This bill allows for transparency for all parties.

(56:00)

Representative Headland: This is an imperfect world. We put this in code and then the notice gets lost in the mail. You are expressing that you don't want to jump in front of the supplier. If that notice gets lost in the mail you will be in front of them if this bill passes.

Lynn Paulson: It is sent by certified mail. This is a courtesy notice.

Representative Richter: We were given a scenario earlier where it comes to getting the crop off the field and they don't have money to do that. Will the bank deny a loan needed to get the crop off the field?

Lynn Paulson: The majority of the bankers would view this as protective advance. It is in their best interest for that crop to get harvested. That is the collateral.

Representative McWilliams: I can understand that the bank would have an interest in making sure the crop comes in. But what happens the next year. Now the bank has the knowledge that a farmer is using an ag. supplier line of credit. Can that be used against the farmer to raise the interest rate?

Lynn Paulson: It could, depending on the overall financial health of the operation. Trust once violated is hard to get back.

Representative Skroch: Why would a bank not be able to make this a requirement on a loan application and be selective about from who you would require it.

Lynn Paulson: You can put that in. When they violate it, it is a violation of a loan covenant. But it doesn't stop what has already happened.

Representative Skroch: How will this bill stop that?

Lynn Paulson: The supplier will, sometime during the year, notify the lender that they are providing these inputs. That will give us an opportunity to sit down early on with that borrower to see if the operating loan budget is still on track. We can rein it in before the double financing occurs. It is addressing the problem at an earlier stage.

Jeff Olson, President and CEO, Credit Union Association of the Dakotas:
(Attachment #4)

(1:05:06)

Tyler Neether, Vice President of Business Lending, Town and Country Credit Union, Minot: This bill will help farmers by finding out sooner. Now appraisals are taking 60 to 90 days which puts us out to planting season.

Representative Skroch: You want a notice in October and not a surprise in February. Simply require your lenders to let you know immediately when they are taking a lien, wouldn't that be accomplished without having this bill?

Tyler Neether: This is human nature. Supply liens are embarrassing. For somebody to admit to a loss, wouldn't happen. They would sooner borrow from the bank across the street.

Representative Schreiber-Beck: Many have mentioned they have to continue searching for liens. What about fixing the lien system to get notification for the growers you have issue with?

Tyler Neether: That would be a great solution to get notice via email.

Representative Schreiber-Beck: I am talking the Secretary of State system with the lien filing.

Rich Clayburgh: I don't see any one here from the Secretary of State. I think it is very expensive. We would have to check with them.

Chairman Dennis Johnson: Many have talked about the fear of a lender going across the street. If they are in a questionable position, the bank across the street probably doesn't want to do it either.

Opposition:

Stu Letcher, Executive Vice President of the North Dakota Grain Dealers Association: Supplies are expensive. They are applied when the return is greater than the cost. Thus the lender's collateral is enlarged because of the supplies furnished. The supplier's lien insures the supplier can recoup their costs but only for the amount of the supplies furnished and only in the crop grown with those supplies. The lender benefits from those supplies and can also take a security interest in other valuable property such as land and machinery, vehicles, and the crop. A common means of doing business in our industry is to first provide supplies and then build a customer with terms of net 30 days on the balance. Depending what time of the

month the supplies are furnished, the billing cycle could stretch over 30 days without the balance being overdue. It may be that the supplier didn't intend to be a creditor and they may not know whether they will file a lien until the 120th day in the law.

This bill also creates a privacy issue with producers. Input suppliers should not be asked to get in between the producer-lender relationship. A very simple fix would be to put those requirements in the terms of the loan agreement. The borrower not the supplier should report such activity to the lender.

HB 1220 would put additional requirements on grain elevator operators who already spend time and dollars researching the central index system. If an elevator wants to buy grain, they must first check the system to get the right lender's name on the farmer's grain checks. The motivation for creating a central notice system was the desire for lenders to move away from a direct notice type of system. When the central notice system was created in 1985 and the lien statutes were changed in 1987, there was an agreement between the lenders and the grain buyers that the buyers would agree to the notice system and accept responsibility to put the lenders names on the farmer's grain checks. If lenders want more requirements on ag. suppliers, perhaps the requirement for grain buyers to put lenders names on farmer's grain checks should be removed.

This bill puts unreasonable burden on ag. suppliers. It is a solution looking for a problem.

Paul Coppin, General Manager of Valley United Co-op, Reynolds: (Attachment #5)

(1:20:00)

Representative Richter: Do you know every creditor that a farmer has when you give them a line of credit?

Paul Coppin: In most cases we do know. They have a credit application. They are not required to let us know. The son may have one bank and the father another.

Dennis Haugen, 1st Vice President, North Dakota Grain Growers Association: (Attachment #6)

(1:23:10)

Mike Rud, North Dakota Petroleum Marketers Association: Even with the banker's amendment of 45 days, we don't want to see the time for filing fall below 120 days. There are farmers now that have storage that exceeds what a bulk plant has. \$50,000 can be reached quickly. 120 days has been a good window for our marketers. We oppose the bill.

Kayla Pulvermacher, North Dakota Farmers Union: We would like to see it capped at the 120-day window.

Chairman Dennis Johnson: Closed the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1220—Committee Work
1/31/2019 --p.m.
Job # 32322

☐ Subcommittee
☐ Conference Committee

Committee Clerk: ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to priority of agricultural supplier liens; and to provide for application

Minutes:

Rick Clayburgh, North Dakota Bankers Association: We talked some things through with the suppliers. If we could turn this into a study resolution as there are some legitimate questions. In a study we may come to resolution.

Chairman Dennis Johnson: We have had this discussion before. It puts us in an easier position because we see both sides. We can hog house this bill and keep the title.

Stu Letcher, North Dakota Grain Dealers Association: The common ground is that we are always in the central index system. It creates another step for us to send out a letter. If they want notification, let's fix the central notice system. Why can't we build something like the legislative tracking system? You can track certain people which will give us notification.

Chairman Dennis Johnson: We will wait for an amendment for a study.

Representative Headland: What we are studying is the filing system and not the priorities?

Chairman Dennis Johnson: Correct.

Representative Dobervich: The Secretary of State's system doesn't support an action that both parties agree that would be helpful. Why study a partial solution? Would we be better served by a directive to put that in motion vs. studying it? Why wait two more years to study something that isn't working?

Rick Clayburgh: They have a good system. People using it are happy with it. It is a third party system from the private sector. We are the only state that allows a Social Security number to be used in the search process. The issue is the cost and can they do it in the system. We have been dealing with this for decades.

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

HB 1220—Committee Work
2/7/2019
Job #32384

☐ Subcommittee
☐ Conference Committee

Committee Clerk: ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to priority of agricultural supplier liens; and to provide for application

Minutes:

Chairman Dennis Johnson: That is the notification on purchase from a supplier of over \$50,000. It is hard to make a decision.

Both sides got together with an amendment #.02001. It puts it into a study through the central notification system.

Representative Dobervich: Moved to adopt the amendment.

Representative Schreiber-Beck: Seconded the motion.

Representative Schreiber-Beck: I see it is "shall" study. Are we weakening our position?

Chairman Dennis Johnson: We don't have a lot for the interim Agriculture Committee. I'm sure we will be studying it.

A Roll Call vote was taken: Yes 12, No 0, Absent 2.

The amendment is adopted.

Representative Headland: Moved Do Pass as amended.

Representative Skroch: Seconded the motion.

A Roll Call vote was taken: Yes 12, No 0, Absent 2.

Do Pass as amended carries.

Representative Schreiber Beck will carry the bill.

February 7, 2019

DE 2/7/19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1220

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of secured party notification."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY. During the 2019-20 interim, the legislative management in coordination with the secretary of state shall consider studying how the state's central indexing system can be used to provide notification to a secured lender when a super priority lien is filed on the collateral of a secured lender. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly. If the secretary of state determines there is a solution using the central indexing system, the secretary of state may proceed with implementing the change prior to the sixty-seventh legislative assembly convening."

Renumber accordingly

Date: 2/7/2019

Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1220**

House **Agriculture** Committee

☐ Subcommittee

Amendment LC# or Description: 19.0288.02001

Recommendation

- ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Dobervich Seconded By Rep. Schreiber-Beck

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Ruth Buffalo	X	
Vice Chairman Wayne Trottier	X		Rep. Gretchen Dobervich	X	
Rep. Jake Blum	X				
Rep. Jay Fisher	X				
Rep. Craig Headland	X				
Rep. Dwight Kiefert	AB				
Rep. Aaron McWilliams	AB				
Rep. David Richter	X				
Rep. Bernie Satrom	X				
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch	X				
Rep. Bill Tveit	X				

Total **Yes** 12 **No** 0

Absent 2

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/7/2019

Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1220**

House **Agriculture** Committee

☐ Subcommittee

Amendment LC# or Description: 19.0288-02001

Recommendation

- ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Headland Seconded By Rep. Skroch

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Ruth Buffalo	X	
Vice Chairman Wayne Trottier	X		Rep. Gretchen Dobervich	X	
Rep. Jake Blum	X				
Rep. Jay Fisher	X				
Rep. Craig Headland	X				
Rep. Dwight Kiefert	AB				
Rep. Aaron McWilliams	AB				
Rep. David Richter	X				
Rep. Bernie Satrom	X				
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch	X				
Rep. Bill Tveit	X				

Total **Yes** 12 **No** 0

Absent 2

Floor Assignment Rep. Schreiber Beck

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1220: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1220 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of secured party notification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY. During the 2019-20 interim, the legislative management in coordination with the secretary of state shall consider studying how the state's central indexing system can be used to provide notification to a secured lender when a super priority lien is filed on the collateral of a secured lender. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly. If the secretary of state determines there is a solution using the central indexing system, the secretary of state may proceed with implementing the change prior to the sixty-seventh legislative assembly convening."

Renumber accordingly

2019 SENATE AGRICULTURE

HB 1220

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee Roosevelt Park Room, State Capitol

HB 1220
3/1/2019
JOB # 33070

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Florence Mayer

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide for a legislative management study of secured party notification.

Minutes:

None.

Chairman Luick: Called the committee to order on HB 1220. All members were present except for Senator Oswald. Senator Heckaman sat in for Senator Hogan.

Rick Clayburgh, President of ND Banker's Association: Testified in favor of HB 1220. (No written testimony.) Thank you to Representative Keiser for introducing HB 1220 on the House side. This is not how the bill originally started, it was turned into a study on the House side. It was originally a notice provision for priority liens. If someone would take one from an Agriculture supplier perspective, they would have been required to provide notice to the lender of record, the originally bill was within 20 days for any lien over \$50,000. We offered amendments in the House to make that 40 days or 45 days. The whole concept was to provide notice to the lender. The lender will go out and provide an operating line of credit to a producer in the spring, that credit is used to purchase the equipment. Our interest was not for the everyday fuel dealers or smaller supplies, but someone who would go out and purchase \$200,000 - 300,000 in seed fertilizer. The supplier then has the ability within 120 days to file a lien. The lender has a line of credit, the producer will come back to the bank and say "By the way, just purchased seed through 'X' and I'm going to use my line of credit to pay it off when it comes due". Where the concern comes in, you may have a producer who takes advantage of purchasing that supply, then they have that operating line and may start using it for other needs within the farm. You now have 2 loans being secured by a single crop. We've had instances where producers have gotten into trouble. The way the bill was written, the grain people's concern was that it's in the statute now, they have the ability to take that suppliers lien. Then with the bill, if they didn't take action in the 45 days, then they would still have a lien, but they would lose that priority. It's a difficult area. We agreed to turn this into a study with a "shall", but it also includes the Secretary of State's office. There is potential that the central indexing system can be tweaked so that if someone comes in and wants to file a priority lien, notice can somehow be generated electronically. It's better than what we are getting now. We just don't want negative surprises or to force anyone out of business. We would want to do this based on the customer's name, instead of the property.

(5:42) Chairman Luick: Right now there is nothing in place right now to make sure this doesn't happen?

Rick Clayburgh: The only thing that occurs is that once the supplier files a lien, that is out there, but we may not become aware of that lien for several months or until the crops are sold. Then the check shows up to the institution and there are other names on the check. That can be our first notice. In this case, once the lien is filed against an individual, anyone who has a lien on that individual would receive electronic notice. We just want to provide notice soon enough for lenders.

Chairman Luick: Is that even soon enough?

Rick Clayburgh: It is better than what we have. We understand the passion of the folks on the other side of the issue. We all can agree this is the best solution to try to address this. Our lenders are involved with all of this. We lend money to both the suppliers and the producers. We don't want to take advantage of anyone. Just to make sure those infrequent surprises don't pop up. I signed in neutral, but I guess I can say we are in support of moving the study forward.

(8:23) Barry Haugen, President of Independent Community Banks of ND: Testified in support of HB 1220. (No written testimony.) We want to build more transparency with this process and eliminate unpleasant surprises. In short, we would support this study and hope to build a better process.

Senator Larsen: Do you think that getting stake holders together and working with them, would be just as effective as a study? Maybe then a piece of legislation next session? Or is this just to get a blessing on this through the interim?

Barry Haugen: I think this in the current form would allow us to do just that. This would allow us to work with the Secretary of State and the stakeholders. If it appeases all parties it won't have to come back.

Senator Larsen: Did this just come forward? Or last interim? How long has this idea been around?

Barry Haugen: Since the 1980s. I've been here for 3 sessions, we haven't had a bill or study directly relating to this. It came from the financial crisis of the 1980s.

Chairman Luick: It surprises me there isn't a better system intact today.

Ryan Norrell, general counsel for Farm Credit Services: Here on behalf of the ND Farm Credit Counsel. Testified in support of HB 1220. This doesn't change priorities or put a burden on supplier or farmers, this just enables the secretary of state to explore ways to notify us.

Chairman Luick: Who are they including in this study? Just the Secretary of State's office?

Ryan Norrell: I don't know. I can speak to other projects we have worked on with the Secretary of State. We have had a variety of stakeholders, lenders, people involved. When we modified the Central Notice System, many parties were brought to the table for input. The Secretary of State is very responsive to that.

Gary Knudson, ND Agriculture Association: Representing dealers and distributors of crop inputs throughout ND. I think the issue is twofold. We need an improved system with what is being charged and put on credit. Our plight is, given the condition of the economy, variability of moisture, prices, etc. There are a lot more risks out there. I understand the overhead with examiners and credit worthiness. We are facing a credit crunch in the Agriculture area. We are looking at suppliers as an additional source of funds for putting that crop in. We can't take on any more risk. The bank probably has all the machinery, maybe even the livestock. The crop lien is not the top of their list as collateral for making that loan. It's the only thing we have. That \$30,000 charge can go up to \$100,000 over night with fertilizer, pesticide, etc. We concur with improving the notice system, we support the study.

Stew Letcher, ND Grain Dealers Association: We were on the opposing side of the original bill. Just want to give a history of the credit. In the early 1980s, ND was on a direct notification system, you had to do it directly with a letter. Central notice came along in the mid-1980s. As a grain buyer, if we want to purchase a bushel of grain we have to go to the central notice system to see if there's any liens held by anyone else. The responsibility for that missed lien falls back on the elevator, then we write that check twice. We agreed to go along with the central notice system. Part of that was we got the Agriculture suppliers lien. We get the priority, but we accepted the responsibility with that as well. There are sometimes 4-5 names on that check. There might be a bank that 2-3 Agriculture suppliers as well. It does get interesting with determining priority. It comes down to the filing date. We recognize the situation the bankers are in too. We support this study.

Senator Larsen: What will the study provide, other than the bill that was initially there? After the study is done, will it look the same? What are you looking for new that might come out of this study?

Stew Letcher: We hope for a little more push then pull in the system. Maybe something with the legislative bill tracking system. It's a lot easier then scrolling through a ton of info. If you have a lot of customers in the system and trying to find new filings every day, that may not work. If we could adopt something that would give notification, that would save time and effort.

Senator Larsen: If you're developing a system, that doesn't seem to need to be a law? I don't see what the study will produce, when folks can get together and do this themselves?

Stew Letcher: Before this was a study, the bill would of required the Agriculture supplier to give direct notice within a certain amount of time. 45 days from when the supplies are furnished is not enough. The supplier may not even know they're a creditor at that point. Also, there is no way to determine whether they are a big or small farmer. Every time we file a lien, we would have had to fire off a letter to every other secured creditor in the system. You might have 3 liens on one producer every time you file it. If there's 15 other people in the system, it's 15 letters every time. You can imagine the amount of paper with that. With the electronic

system it would save time and effort. There is no incentive for the Secretary of State's office to do anything right now. With the study, that would show them why this is an important upgrade.

Chairman Luick: My brother-in-law and I used to write computer code to track stocks. I know there are ways this could be done. I'm concerned about confidentiality with this.

Stew Letcher: There are a lot of aspects to this system. Thus our thought is the study. Maybe the Secretary of State can bring something to the table that hasn't occurred to us.

Senator Klein: The whole idea is we have gone the opposite direction of bankers versus the suppliers. Let's look at a better way of understanding where the super lien is at. That would be through the central indexing system. You folks teaming up with the Secretary of State to work on the same page and help both of you.

Stew Letcher: Correct, when we were debating this on the House side. What is the issue? If it's just a notification issue, we need to get our heads together and determine what we want here. If it can be done through a system, we agree that would be good for both of us.

Chairman Luick: Was there a fiscal note on this initially? (No.)

Kayla Pulvermacher, ND Farmer's Union: The idea of bringing all the stake holders together is something we agree with. We want to handle this before we go into a legislative session.

Chairman Luick: Yesterday's paper they listed the amount of bankruptcies and deficiencies across the USA, worst in 8 years right now.

Jim Silrum, Deputy Secretary of State: We are in 100% support of this study. This came about because, the way the bill was introduced, we weren't involved at all. We support this because, we will achieve a solution everyone is happy with. Our system is capable of being enhanced to provide the type of notification that is desired. We want the outcome to be what everyone desires, not just a certain few. As we look at the history, we don't have to look far. In 2011, you agreed with the Secretary of State and the lending community to move the system from paper based to an online system that we now have. Before 2011, the searches cost the lenders money. We proposed the search to be free, they loved that. Now, let's provide notifications to them. We are fine with that. The Secretary of State has been receptive to working with the lending community to make sure the central indexing system is what it needs to be. We are working on a cooperative enhancement that further secures the priority on these liens. This allows those who are originators of the lien to be able to file amendments, rather than others. I think we could do this without a study, but maybe good with including legislature

Chairman Luick: Are you concerned with confidentiality?

Jim Silrum: No more risk of that, then there already is. Right now there isn't much risk. It is highly secured and encrypted data. Only few people get to see all those details. We could

create a push system with RSS feeds, in the same way I knew to show up for this committee today.

Senator Larsen: Page 1 line 4, where it says the 'state shall consider'. Do we know there will be a study? Does it need to be a different word? We throw out these studies, pass them through, then with the interim they decide differently.

Jim Silrum: The only way to make it stronger is to take out the word 'consider'. Then it would mandate it must be studied. If we decide not to study this, this won't be something we let go by the wayside. We have a very proactive user group to get their feedback. It would be good for you to ask them the questions of how responsive we are to that.

Chairman Luick: Called for further testimonies. Closed the hearing on HB 1220.

Senator Klein: Moved a Do Pass on Engrossed HB 1220.

Vice Chair Myrdal: Seconded.

Senator Larsen: I always have reservation on these studies and why these things can't get done without us. When the roll call comes I'll decide how I'm going to vote on it.

Chairman Luick: We are short 2 members. I either need to hold it or vote.

Senator Klein: We've been involved with a lot of study issues. This is a big deal, we have concerned folks. I bet the room was even more full on the House side, because it dealt with those issues. The fact we have pretty much everyone working together on what they believe is the right direction. Are we coaxing them a bit more to get it done? I've been chicken to introduce that bill for many sessions, I still am. We are in the right direction. If bringing these groups together, and studies, this is where we get things done. Hopefully before the next session. This should have been done a long time ago.

Senator Larsen: Is the language strong enough to have a study?

Chairman Luick: The emphasis needs to be put on Legislative management.

Senator Heckaman: The only way you could vote on this, is hold this until this afternoon. Then there would have to be a motion on the floor to replace Senator Hogan with me on this committee. Then we'd have to replace again on Monday. I think you can get this passed right now though.

Senator Klein: If you're legislative management you get lobbied on bills just like we do here. The Agriculture community is noted out there and will coax the folks to pick issues most important to them. This would be one of those.

A Roll Call Vote Was Taken: 4 yeas, 0 nays, 2 absent.

Motion Passed.

Senator Klein will carry the bill.

Chairman Luick: Thank you everyone. Adjourned the committee.

Date: 3/1/19
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1220

Senate Agriculture Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Klein Seconded By Myrdal

Senators	Yes	No	Senators	Yes	No
Chairman Luick	✓		Senator Hogan (Herkamer)		
Vice Chair Myrdal	✓				
Senator Klein	✓				
Senator Larsen	✓				
Senator Osland Absent					

Total (Yes) 4 No 0

Absent 2

Floor Assignment Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1220, as engrossed: Agriculture Committee (Sen. Luick, Chairman) recommends **DO PASS** (4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1220 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1220

**Testimony of Rick Clayburgh
North Dakota Bankers Association**

HB1220

January 31, 2019

Chairman Johnson and members of the House Agriculture Committee, my name is Rick Clayburgh, President and CEO of the North Dakota Bankers Association (NDBA). I am here today on behalf of the NDBA to express our support for HB 1220.

HB 1220 was introduced on behalf NDBA and ICBND. HB 1220 creates the requirement of agricultural suppliers to notify the customer's primary lender of the supplier's intent to file a supplier's lien if the purchase exceeds \$50,000. This notice must occur within 20 days of supplies being furnished. In discussing this with industry representatives, we believe 20 days may be too short a time period and would request this committee amend the bill to a 45-day time period. The proposed amendment is attached to my testimony.

North Dakota banks provide capital to North Dakota's Ag industry through annual operating loans to farmers. North Dakota banks also provide annual operating loans to Agricultural Suppliers. As things become more difficult in our State's Ag economy, issues arise which our laws might not have the ability to adequately address. One of those laws is the protection of the Agricultural Supplier Lien Statutes found in chapters 35-31 of the North Dakota Century Code. NDBA is in favor of an Ag Supplier having the ability to take a lien on the farm products they have helped to produce. We are simply asking that if significant credit is given by an Ag Supplier, the Ag Supplier provide the Bank notice.

Banks will meet with farmers in the beginning of the year to determine how much capital the farmer needs from the Bank to plant and harvest crops or to raise livestock. A budget is set and the Bank extends an operating line of credit to the farmer to cover those costs. As the line is used by the farmer, the Bank assumes that the funds it lends to the farmer are going to buy the things and services necessary to raise the farm products.

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Problems arise when the Bank's funds aren't used to pay for that year's operating needs and the farmer purchases his or her operating needs on credit from the Ag Supplier which results in a double finance of that year's crop or livestock. Inevitably, at the end of the year, the farmer sells crops or livestock and checks are cut from the buyer of the farm product with the Ag Supplier and the Bank listed as payee. The Bank who thought it supplied the majority of capital to create the crop or produce the livestock is now behind the Ag Supplier for payment from only one payment source. As production costs have risen and commodity prices have remained low or dropped, there is less profit margin and an inability of the farmer to repay creditors – let alone to pay two creditors for the same production costs.

The tragedy happens when the crops are sold and the farmer is unable to repay operating loan to the Bank because the majority of the profits from farm products went to the Ag Supplier. The Bank is then forced to look at repayment of the farmer's debt from other collateral, like farm equipment, machinery and land. A Bank's foreclosure might put the farmer into bankruptcy or even out of business.

Notice from an Ag Supplier to a Bank can limit the extension of additional Bank credit to a farmer who might already be in trouble or at least allow the Bank the ability to sit down with the producer to determine how to best to get through a troubled time.

The Notice requirement being proposed is already used between lenders for new money lent for inventory and livestock. This is called Purchase Money Notice and is found in § 41-09-44 of the North Dakota Century Code. It does not change the priority lien of the new money lender but it gives the existing lender a heads up about the future status of its collateral and the ability to decide if the existing lender will extend credit for collateral it will no longer hold a first interest in.

This bill seeks to provide the same protections to existing lenders as the PMSI Notice for Ag Liens that rise to amounts that look more like financing and that have the potential for serious harm to Ag Lenders and to farmers as well. This notice is currently required between lenders but not for Ag Suppliers to lenders. If a Bank wishes to provide new financing to a rancher, it needs to provide a letter of notice to all other Banks previously of record.

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This type of notice is not unreasonable. Ag Suppliers are often also Ag Buyers and are familiar with the requirements of checking the Central Notice System to include lien holder's names on Ag proceeds checks, N.D.C.C. § 41-09-40 and N.D.C.C. § 54-09-10. Furthermore, in 2016, the North Dakota Secretary of State's Office records went online allowing free searches for filed liens. The Ag Supplier does not have to file its lien nor does there need to be anything filed by the Ag Supplier in the public record.

NDBA is not asking the North Dakota Ag supplier lien be impeded or weakened in any way. Banks that provide agricultural financing to farmers are simply looking for notice when other credit is being extended that will have a significant impairment to their collateral position. If any interested party acting on behalf of agricultural suppliers has an amendment that would provide a timely notice to Banks when additional credit is being provided, NDBA would be supportive.

PROPOSED AMENDMENT TO HOUSE BILL NO. 1220

#1
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Page 1, line 19, replace "twenty days" with "forty-five days"

#2
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House Bill No. 1220

Presented by: Barry Haugen
President
Independent Community Banks of North Dakota ("ICBND")

Before: House Agriculture Committee
Representative Dennis Johnson, Chairman

Date: January 31, 2019

Good morning Mr. Chairman and members of the House Agriculture Committee. For the record, my name is Barry Haugen and I am President of the Independent Community Banks of North Dakota (ICBND). Our membership totals 60 independent community banks throughout our state with almost two-thirds of those still having home charters based in rural communities smaller than about 4,000 people. Relationship banking and agricultural lending is what our members do.

We stand this morning in strong support of Senate Bill 1220, and the proposed amendment, and recommend that the committee give this bill a do pass recommendation. We fully understand the protective nature of our statutes for those enterprises that provide the services and supplies that are essential for growing crops and livestock in our state. And we're certainly not trying to restrict those entities from granting credit.

What we don't think is equitable however, is the fact that community banks in a lead lending situation have to both give up their priority position – AND – lack any transparency of what trade credit (which can be significant) is possibly outstanding and ahead of them when farm products are sold. Currently, it's possible that an ag lender at that community bank doesn't find out until those ag products are marketed or they do continual lien searches up until 120 days or 150 days depending on the products or services supplied.

So, here's a bit of an oversimplified scenario. The community bank lender and the ag producer work out that customer's farm operating loan during the winter renewal season. These funds are secured by farm products and may include significant funding amounts for supplies including seed, chemical, fertilizer and anhydrous ammonia.

Now let's jump forward to April. Undoubtedly, the ag supply business is competitive and those suppliers may provide attractive financing terms to producers in order to get the business. Ag production is a challenging business. We know that. And producers need every edge they can get. So, because the supplier and the producer are good business people, they work out a deal for supplies that I mentioned before. And those supplies are provided before May 1.

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During the summer, the producer might have very high operating costs due to unforeseen equipment repairs or whatever and then we get to harvest. It does happen that producers need additional operating funds to get crops off the field so they approach their community banker who provided the operating line to get additional funding.

The lender has no way of knowing at that time how much trade credit might be outstanding or to whom because the 120 or 150 day timeframe has not run out. A simple notification related to the extension of significant amounts of trade credit would help reduce the uncertainty of this scenario without changing the 120 or 150 day timeframes. Timely information results in less uncertainty and better decisions.

So how could this be effectuated? I believe one possible option is a mechanism for notification that is already in place. Per NDCC 35-31-02 (Procedure to obtain lien), it states;

“Before a supplier’s lien is filed, a billing statement for the supplies furnished must include notice to the agricultural producer that if the amount due to the agricultural supplier is not satisfied a lien may be filed.”

It seems to me that, for trade credits in excess of \$50,000, providing a copy of that billing statement to the secured creditors of record within 45 days of delivery (as the proposed amendment states) is cheap insurance to maintain the superpriority lien status. It would simply require the supplier to do a UCC search online, which has no fee, and add that party to the distribution.

So this bill, including the proposed amendment, neither restricts credit nor causes additional Ag Supplier Liens to be filed. What it does do, is create more transparency for all involved so everybody’s best interests can be satisfied.

In closing, I will repeat a comment that I opened with. ICBND’s members fully understand the protective nature of our statutes for those enterprises that provide the services and supplies that are essential for growing crops and livestock in North Dakota. This bill, as amended, would still be the least restrictive statute from the ag suppliers’ perspective of any ag producing state in the upper Midwest including South Dakota, Minnesota, Montana, Iowa and Nebraska.

We respectfully request a do pass on House Bill 1220 including the proposed amendment.

Thank you for your time and consideration. If you have any questions, I’d be happy to try to answer them.

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**House Bill No. 1220 – Agricultural Supplier's Lien
Talking Points
Addendum to Testimony of Barry Haugen**

NDCC 35-31-02 today provides superpriority lien status for agricultural suppliers who file an ASL-2 in the central indexing system:

- Within 120 days for feed/seed/chemical/fertilizer suppliers
- Within 150 days for petroleum product suppliers
- And pay \$40 to make the filing securing their priority position
- If filed correctly and timely, is superior to any creditor (financial institution) claims resulting from earlier perfected UCC Security Interests
- And subordinate only to an agricultural processor's lien

ICBND understands the protective nature of our statutes for those businesses that provide the services and supplies that are essential for growing crops and livestock in our state. However, providing simple notification to secured creditors of record as outlined in HB 1220 would:

- Create transparency to financial institutions providing operating fund financing from previously perfected UCC Security Interests
- Reduce the inequity to those generally in a lead lending situation
- Not hinder the availability of trade and financial institution credit to ag producers.
- Maintains the superpriority status for ag suppliers who chose to file ASL-2's.
- Reduce the May-September dilemma many lenders face when additional operating funds might be necessary to get crop off the field

Ag supplier lien statutes in other Upper Midwest ag production states:

- **South Dakota – 30 days – For seed suppliers, but no superpriority**
 - Limited to seed suppliers only – **not** fertilizer, chemical, petroleum or other ag suppliers
 - Must be filed with Register of Deeds in the county where the crop is or will be planted within 30 days after the seed grain is furnished
 - If filed appropriately, has preference in order of filing over all other liens and encumbrances except for threshers' liens
- **Montana – 90 days – superpriority for crop seed or grain only**
 - Lien for seed or grain limited to crops
 - Separate lien for fertilizer and pesticides limited to spraying service and supplies
 - Both must be filed with SOS within 90 days after service/supply provided
 - Seed lien is superior to fertilizer/pesticide lien and both have priority over other encumbrances
- **Minnesota – already requires notification of lienholder before superpriority can be achieved**
 - Crop Production Input Lien requires notification to the lender who can
 - Provide letter of commitment for part or all of the amount and then the ag supplier cannot obtain a lien for amount stated in the letter of commitment
 - Can refuse to provide letter of commitment, or
 - Can chose to not respond
 - If lender fails to respond or refuses to provide letter of commitment, the ag supplier can perfect a crop production lien by filing with the SOS within 6 months after suppliers provided inputs.
 - Crop production input liens have priority over all encumbrances except landlord or harvester liens

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- **Iowa – 31 days – no superpriority**

- Ag Supplier Dealer Lien becomes effective at the time the producer purchases the ag supply
- As long as supplier files financing statement with the SOS within 31 days after the date of the purchase
- Includes notification requirements to secured lenders and options for lender to provide letter of credit parameters
- Is only up to equivalent priority of the financial institution - not superpriority.
- Complicated statute

- **Nebraska – 60 days – no superpriority**

- Separate liens for petroleum products, fertilizer and ag chemicals, and seed or electrical power and energy
- Fertilizer/chemical liens must be filed via UCC financing statement within 60 days of and is effective upon filing, but no priority over previously perfected liens
- Supplier may notify lender of consideration of extension of credit by supplier – lender can commit to all or part, refuse to commit, or not respond
- Priority of ag lien over lender's secured interest only occurs if lender is notified and fails to respond
- Also complicated



North Dakota Farm Credit Council

AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota

#3
HB1220

1/31/19

**Testimony of Ryan Norrell
General Council for Farm Credit Services of Mandan
HB 1220
January 31, 2019**

Chairman Johnson and members of the House Agriculture Committee, my name is Ryan Norrell. I am here today on behalf of the North Dakota Farm Credit Council (NDFCC) to express our support for HB 1220.

NDFCC is comprised of three farmer/rancher-owned independent Farm Credit associations that provide credit and financial services to farmers, ranchers and agribusinesses of all sizes and income ranges in every county in North Dakota. North Dakota Farm Credit associations provide about \$11 billion in credit, in addition to providing financial services to approximately 25,900 customers. Farm Credit Services wants to limit the potential for there to be additional unknown debt out there as we analyze credit, and we want to do whatever we can to keep farmers and ranchers from getting overextended.

HB 1220 leaves the existing lien priorities in place. An agricultural supplier's lien still has priority over all other liens or encumbrances. We fully understand and appreciate the legislature's intent to protect those who provide supplies vital to our farmers and ranchers' success; we're only asking for notice.

HB 1220 would ensure that creditors know about our borrowers' debt levels and serves to improve communication between the lender, agricultural supplier and the farmer. This helps both the farmer and the lender work toward creating an awareness so lenders can provide more appropriate operating loan amounts and increase those amounts, if necessary.

Independently owned and operated associations serving North Dakota and northwest and west central Minnesota.

AgCountry FCS
1900 44th Street South
Fargo, ND 58108
701-282-9494 • 800-450-8933
www.agcountry.com

FCS of Mandan
1600 Old Red Trail
Mandan, ND 58554
701-663-6487 • 800-660-6487
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FCS of North Dakota
3100 10th Street SW
Minot, ND 58702
701-852-1265 • 800-264-1265
www.farmcreditnd.com

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Historically, in the Farm Credit System, many agricultural supplier liens are filed in situations where there is moderate to high credit risk. Early detection of this credit risk allows all parties more time and options to deal with the financial stress and protects the farmer while reducing the potential for loan losses. A creditor will continue to advance operating capital when an unknown lien exists, sometimes to the detriment of the creditor or the farmer. And, keep in mind since Farm Credit is a cooperative, those losses are shared by the owners, our farmers.

The opponents of the HB 1220 argue that the bill places additional responsibility on the agricultural supplier because providing notification during busy times is challenging. Although we understand the suppliers' concerns, we believe the lender, the supplier and the farmer all need to take responsibility and work collaboratively in order to prevent unnecessary financial stress due to stacking of debt and to ensure the future sustainability of our farmers and ranchers. NDFCC has no objection to Mr. Clayburgh's (NDBA) proposed amendment increasing the time of such notice from 20 to 45 days. Mr. Haugen's (ICBND) suggestion of simply mailing a copy of the billing statement to a secured party would be a very effective way to put lenders on notice, especially since this billing statement is already required by law to provide notice that a lien may be filed.

Finally, we believe HB 1220 would serve to prevent disputes, which often arise when creditors are surprised by a filing, and reduce the potential for litigation.

With the prospect of a continued downturn in the farm economy, NDFCC wants to be well positioned to assist the state's farmers and ranchers with appropriate levels of credit, and the notice requirement proposed in HB 1220 helps Farm Credit achieve that goal.

Thank you for the opportunity to appear before you today to express our support for HB 1220. I would be happy to answer any questions.

NORTH DAKOTA FARM CREDIT COUNCIL

The North Dakota Farm Credit Council (NDFCC) is comprised of three independently owned associations that provide credit and financial services to farmers, ranchers and agribusinesses of every size and income range.

The three associations that make up the North Dakota Farm Credit Council are:

- AgCountry Farm Credit Services
(headquartered in Fargo)
- Farm Credit Services of Mandan
- Farm Credit Services of North Dakota
(headquartered in Minot)

As farmer-owned cooperatives, we are focused on the broad mission of improving the income and well-being of America's farmers and ranchers and the rural communities where they reside by furnishing sound, adequate, constructive and reliable credit and financial services.

Loan funds are obtained through bonds and discount notes sold in the national securities market, thereby enabling the three North Dakota based Farm Credit associations to infuse capital from outside sources into rural North Dakota.

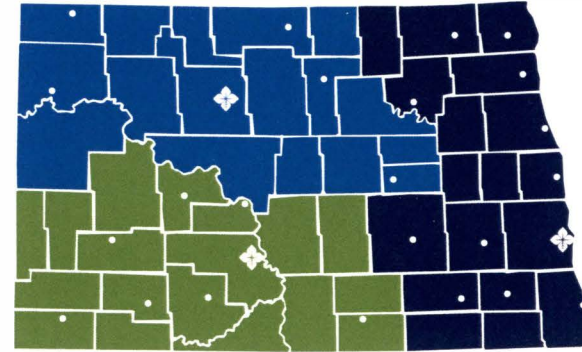
PRODUCTS AND SERVICES

North Dakota Farm Credit associations provide \$11 billion in credit in addition to providing financial services to approximately 25,900 customers. More than 3,000 Farm Credit borrowers are young and beginning farmers.

We have been meeting the needs of agricultural producers for more than 100 years with a full spectrum of products and services, including:

- Real estate loans
- Operating loans
- Equipment and facility loans
- Facility, vehicle and equipment leases
- Agribusiness loans and services
- Equity stock financing
- Tax planning and preparation
- Record keeping services and software
- Multi-peril crop insurance
- Crop hail insurance
- Life and disability insurance
- Producer education
- Farm cash management
- Electronic commerce
- Young and beginning farmer support
- Business succession/transition services

OFFICE LOCATIONS



 Corporate Offices  Branch Offices



AgCountry Farm Credit Services

1900 44th Street South
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www.agcountry.com



Farm Credit Services of Mandan

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Farm Credit Services of North Dakota

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NORTH DAKOTA FARM CREDIT COUNCIL

*AgCountry Farm Credit Services
Farm Credit Services of Mandan
Farm Credit Services of North Dakota*

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**2019
LEGISLATIVE
POSITIONS**



AGRICULTURAL LENDING

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The financial sector of the United States economy is very integrated and highly competitive. This results in the most efficient delivery of financial services to our business and consumers. Anything that limits competition ultimately reduces the services available or increases the cost to consumers. Agriculture must compete with all other sectors of the economy for capital and loan funds. Financial regulations that make agriculture less competitive in credit markets ultimately hurt farmers through higher costs and reduced availability of credit. Legislation that delays collection or promotes only partial repayment of loans results in additional costs that are passed on to other farmer borrowers.

In order to ensure agriculture's ability to compete for credit and financial services, we believe legislative actions are appropriate when the efforts modernize current law that improves the ability to provide service and reduce costs to the consumer yet protects the financial stability of the lending institution.

As such, NDFCC supports:

- Having all Uniform Commercial Code liens and statutory liens receive priority by the time of filing.
- Advancing electronic lending options and modernizing the title assurance process for all lending transactions to improve security, service and reduce costs.
- Dedicating the user fees paid to the North Dakota central notice system to maintain and improve the system.



2019 LEGISLATIVE POSITIONS

The *North Dakota Farm Credit Council* supports legislative action that: **enhances** the success of farmers, ranchers and agribusinesses by allowing greater access to credit; **strengthens** the well-being of rural North Dakota; and **protects** the safety of our food supply.

ECONOMIC DIVERSIFICATION

Agriculture is the most important sector of North Dakota's economy and diversification of the agricultural economy benefits the overall economy. Public partnering with private industry should encourage and promote diversification, including new or specialized crops, expansion of animal agriculture, value added in-state processing of ag commodities, and alternative energy production.

As such, NDFCC supports:

- Expanding new or specialized crop research.
- Creating storage and transportation facilities to allow more identity-preserved production and marketing.
- Enacting practical statewide environmental regulations that expand animal agriculture.
- Providing a stable source of funding to the Ag Products Utilization Commission to encourage diversification.
- Providing loan guarantee programs to leverage state resources in encouraging the development of agricultural processing.
- Maintaining a vibrant livestock sector and consumer confidence in the nation's food supply, and creating initiatives for livestock and poultry care based on sound information, science and economic feasibility.

LANDOWNER CONCERNS

Agricultural producers in North Dakota understand and support regulations for clean air and water, soil erosion reduction, wildlife protection, and the beauty of the landscape.

As such, NDFCC supports:

- Considering the economic impact on landowners when developing regulations that deal with the above issues. Environmental regulations that limit the landowner's ability to convert property to its highest and best economic use also limit the property owner's ability to make a living from the property and to repay debt. When environmental regulations limit the economic value of farmland, the owner should be compensated.
- Basing farm real estate taxes on the land's production value for agricultural purposes to keep non-agricultural uses from raising taxes beyond what agriculture can support.
- Continuing favorable tax treatment for real estate improvements used for agriculture production.
- Ensuring the interests of landowners are protected in connection with energy development.
- Continuing the farm-residence tax exemption.

ENERGY

Agriculture supports and benefits from a diversified energy sector.

As such, NDFCC supports:

- Expanding production and consumption of ethanol, bio-diesel and wind energy to supplement traditional energy sources. This would benefit farmers and the state's economy.
- Organizing and promoting these new energy sources, as well as providing tax incentives and loan guarantees.
- Continuing to support a rural electric cooperative's ability to generate and deliver electricity to its existing service areas at reasonable prices.

AG EDUCATION AND PROMOTION

Agriculture is North Dakota's most important industry.

As such, NDFCC supports:

- Including agriculture in the statewide curriculum for all phases of our educational system.
- Providing grassroots direction through an organization, such as the State Board of Agricultural Research and Extension, to help set priorities for agricultural extension.
- Engaging general farm and agricultural commodity organizations and check-off groups in important educational and promotional activities for agriculture.



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TESTIMONY IN REGARDS TO HOUSE BILL NO. 1220

JEFF OLSON, CREDIT UNION ASSOCIATION OF THE DAKOTAS

Mr. Chairman and Members of the House Ag Committee, my name is Jeff Olson. I am the president and CEO of the Credit Union Association of the Dakotas. We represent 73 credit unions that are providing financial services to 494,000 thousand credit union members in North Dakota and South Dakota.

We are headquartered in Bismarck. In North Dakota alone there are 35 credit unions serving over 212,000 thousand members at 127 branches across the state.

As you may or may not know, credit unions are member owned and democratically operated not-for-profit for financial cooperatives.

North Dakota has 12 credit unions that are engaged in some form of Agriculture, or Farm and Ranch lending. These credit unions are either headquartered in or have a branch in 73 communities and cities across the state; the majority of those are serving rural communities.

In fact, North Dakota's credit unions are among the top in the nation in Ag/farm operation loans. Eight are among the top 20 commercial lending credit unions in the country each year. Most of that is due to their support of ND Farmers and ranchers. Many or most of these credit unions have been involved in Ag and ranch lending since their charter 70 to 80 years ago.

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For many North Dakota producers and ranchers, these credit unions are their financial source for land or lease purchases, equipment loans, and farm and ranch operating lines of credit.

Our AG based credit unions are well capitalized, have been providing AG lending for decades, and many have avoided losses even during fluctuating markets prices and adverse weather conditions. These loans are made to our member owners and their farming success and overall financial health is our objective.

We believe this bill offers a proactive solution to curb risk and potential losses and improves communication for all stake and lien holders while leaving the existing lien priorities in place. We ask for your support of HB 1220.

Chairman Johnson and Members of the House

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Agriculture Committee:

My name is Paul Coppin. I serve as General Manager of Valley United Co-op in Reynolds with branch locations in Buxton, Mayville, Hatton, Hillsboro and Grandin. I'm also Past President of The North Dakota Agricultural Association and am speaking on behalf of The Association. We are a voluntary organization of about 450 dealers, distributors and providers of crop inputs. We strongly oppose House Bill 1220.

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My remarks are brief but to the point. Maintaining the Supply Lien in its current status is critical to farmers and the Agriculture supply industry. We strongly object to what might appear to be minimal changes, but they are not!

2. An agricultural supplier's lien exceeding fifty thousand dollars has priority under subsection 1 if:

a. The agricultural supplier sends an authenticated notification to the holder of a

conflicting security interest of record which states the

agricultural supplier may acquire an agricultural

supplier's lien in the crops, agricultural products, or

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the livestock of the debtor in an amount that exceeds

fifty thousand dollars; and

b. The holder of the conflicting security interest

receives the notification no later than twenty days

after the date the agricultural supplies were furnished

or services performed.

First, we don't feel it to be our dealer responsibility to notify the Banks on the delivered and billed amounts of their customers. The amount and time frame suggests a serious trip wire to jeopardize our supply lien priority. We have no other collateral other than the crop, whereas the financial institutions have several other sources of security such as equity

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in equipment, livestock, land, assignments, etc. Also, we do not feel there can be any change in the number of days to file a notification to conflicting security interests. As you all know, our weather regularly stretches out planting seasons and supply deliveries. Our time frame to deliver billing statements can easily approach the current 120 day law.

Let me summarize the situation. I'd like to cite this article which appeared in the Farm Forum, January 11, 2019. To paraphrase, "Bankers in parts of the Midwest are tightening the screws on Farmers in the New Year. Fifty-two percent of the Bankers in our

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10 state area said they have boosted collateral requirements for farm loans.” So if there is no more equity to pledge, where does the farmer go for inputs required that exceed his line at the bank?

I think this reiterates that credit will be tighter for a lot of farmers this spring. Many have had to hold last year’s crop. Where do they go if their financial institution is unable to totally meet their needs?

Let’s not add to the risk burden on the dealer supplier and make the situation more precarious and challenging to sell and distribute inputs and provide services to our farmer customers.

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Passage of this bill may cause a number of retailers to
evaluate their credit policy and go to a pre-pay policy
rather than risk missing the extremely tight window
outlined in the bill. Defeat House Bill 1220. Thank you.



North Dakota Grain Growers Association
Testimony on HB 1220
House Agriculture Committee
January 31, 2019

Chairman Johnson, members of the House Agriculture Committee, for the record my name is Dennis Haugen; I am a diversified family farmer, businessman and also 1st Vice President of the North Dakota Grain Growers Association. Through our contracts with the North Dakota Wheat Commission and the North Dakota Barley Council NDGGA engages in domestic policy issues on the state and federal levels on behalf of North Dakota wheat and barley farmers. I appear before you today in all of my capacities in opposition to HB 1220.

Chairman Johnson, members of the House Agriculture Committee, it is the opinion of the North Dakota Grain Growers Association that the lien law which HB 1220 seeks to amend isn't broken and should remain as it is. The bill has two major pitfalls: 1. The number of days to file is unworkable; it is impossible to calculate the time between when seed is purchased and the final pesticide is applied. That said, the timeframes outlined in HB 1220 are unworkable. 2. The notification process in the bill is unworkable as well. This process will only serve to add costs to both ag suppliers and ultimately to farmers.

Chairman Johnson, members of the House Agriculture Committee, lenders can do what HB 1220 seeks to do now in their covenants with their lenders. State law needn't be addressed in this issue. Therefore, I and the North Dakota Grain Growers Association would respectfully request a Do Not Pass on HB 1220.